

CONFERENCE COMMITTEE REPORT
Senate Bill No. 639 By Senator Murray

June 17, 2010

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 639 by Senator Murray, recommend the following concerning the Reengrossed bill:

1. That the House Committee Amendments No. 1 through 4 proposed by the House Committee on Labor and Industrial Relations and adopted by the House of Representatives on May 18, 2010 be adopted.
2. That the Legislative Bureau Amendments No. 1 through 7 proposed by the Legislative Bureau and adopted by the House of Representatives on May 18, 2010 be adopted.
3. That the following amendment to the reengrossed bill be adopted.

AMENDMENT NO. 1

On page 13, after line 27, insert the following:

"Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval."

Respectfully submitted,

Senators:

Representatives:

Senator Edwin R. Murray

Representative Erich E. Ponti

Senator Neil Riser

Representative John Bel Edwards

Senator Sherri Smith Cheek

Representative Herbert B. Dixon

The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary O'Brien.

CONFERENCE COMMITTEE REPORT DIGEST

Senate Bill No. 639 by Senator Murray

Keyword and summary of the bill as proposed by the Conference Committee

WORKERS' COMPENSATION. Provides relative to Workers' Compensation Second Injury Fund. (gov sig)

Report adopts Legislative Bureau Amendments that:

1. Make only technical changes to the bill.

Report adopts House amendments to:

1. Make technical changes in the citation.
2. Add subsection which allows the board to enter into reimbursement agreements with property and casualty insurers, self-insured employers, or group self-insurance funds which have made overpayments to the fund and such action is recommended by the director.
3. Deletes the language "rebuttable" when describing the presumption created when a preexisting permanent partial disability exists, and the employer establishes knowledge of that preexisting condition.

Report rejects House amendments which would have:

NO AMENDMENTS ARE REJECTED

Report amends the bill to:

1. Change the effective date from August 15, 2010 to upon the signature of the governor.

Digest of the bill as proposed by the Conference Committee

Present law provides for the Workers' Compensation Second Injury Fund ("Second Injury Fund" or "fund") to encourage the employment of disabled workers by reducing insurance risk.

Proposed law specifically changes the purpose from encouraging the employment of physically handicapped employees who have permanent partial disability to the encouraging the re-employment or retention of employees who have a permanent, partial disability.

Present law provides that the Second Injury Fund law applies when the employer has been required to pay and has paid compensation for the greater disability when there is a merger of the subsequent injury with the preexisting permanent partial disability.

Proposed law provides that the Second Injury Fund law applies when the employer has been required to pay and has paid additional medical or indemnity benefits for the greater disability of the worker.

Proposed law provides definitions for "permanent partial disability" and "PPD Employee Registry" and "hire and fire authority".

Proposed law sunsets the fund. Provides that no claim shall be submitted for the board approval with a date of accident after December 31, 2014, and all submissions of documentation to support pending claims shall be presented on or before December 31,

2016. Requires the board to render a decision on all pending claims on or before December 31, 2017.

Present law requires that the Second Injury Fund board meet at least once every three months.

Proposed law provides that the board may meet monthly, but shall in no event meet less than once every three months.

Proposed law requires that any interest earned by the fund shall accrue to the fund.

Present law provides that an employer who knowingly employs or knowingly retains in his employment an employee who has a permanent partial disability shall qualify for reimbursement from the fund.

Proposed law adds to present law an employer who re-employs an employee who has a permanent partial disability.

Present law provides the amount of reimbursements are available to an employer or an insurer, generally depending upon the date the disability occurred.

Proposed law deletes present law and provides a table setting forth what reimbursement will be due based upon the date the injury occurred.

Present law provides that no employer or insurer is entitled to reimbursement unless it is clearly established that the employer had actual knowledge of the employee's preexisting permanent partial disability prior to the subsequent injury.

Proposed law provides that "actual knowledge" shall be established only by the following circumstances:

1. Where the preexisting permanent partial disability (PPD) arose out of the employee's previous employment with the employer.
2. When, prior to the second injury, the employee has disclosed to the employer the preexisting PPD.
3. Whereby the employer hires the employee through the PPD employee registry to be maintained by the Louisiana Workforce Commission.
4. Where the employer provides an affidavit containing specific criteria.

Present law provides that upon approval of a claim for reimbursement by the Second Injury Board, the insurer shall certify to the board certain reserve amounts.

Proposed law retains present law, but changes the amount of required reserves to that as provided in proposed law as threshold limits eligible for reimbursement.

Proposed law provides for specific responsibilities with regard to the National Council on Compensation Insurance (NCCI) and the Department of Insurance regarding discrepancies between Second Injury Fund accepted claims and the insurer's certified reserves.

Present law provides that there shall be a presumption that the employer considered the condition to be permanent and to be or likely to be a hindrance or obstacle to employment for several enumerated conditions.

Proposed law retains present law as to the presumption and adds that the diagnosis of the condition must be made by a qualified physician within the scope of their practice or other persons properly licensed and certified to make such a diagnosis, and changes the schedule of preexisting permanent partial disability listing of conditions, as follows:

1. From "epilepsy" to "seizure disorder".
2. From "cardiac disease" to "coronary artery disease or congestive heart failure".
3. Amputated foot, leg, arm, or hand is expanded to include 50% or more loss of use.

4. From "partial loss of uncorrected vision of more than 75% bilaterally" to "legal blindness".
5. From "silicosis" to "pneumoconiosis".
6. From "psychoneurotic disability" to "psychoneurosis or psychosis".
7. From "hemophilia" to "bleeding disorder".
8. Hyperinsulinism and Hodgkins' disease are eliminated.
9. Herniated disc, spinal surgery including fusion, partial or total discectomy or microdiscectomy, chronic obstructive pulmonary disease, post traumatic stress disorder, post-concussive syndrome, Alzheimer's disease, sickle-cell anemia and joint replacement surgery are added.
10. Mental retardation is expanded to allow a diagnosis by any person properly certified to make such a diagnosis.

Effective upon signature of the governor.

(Amends R.S. 23:1371(A), (B) and (C), 1371.1(intro. para.), 1373(A), 1377(A) and (C)(3), and 1378(A) and (F); adds R.S. 23:1371.1(5) and (6) and 1371.2 and 1377(F))